

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Mortgage Banker License of: No. 07F-BD004-BNK

3 **CONSUMER FIRST FUNDING, INC. AND**
4 **JEFF A. GEORGE, C.E.O.**

5 7077 E. Marilyn Rd., Building 5, Suite 140
6 Scottsdale, AZ 85254

CONSENT ORDER

7 Petitioners.

8 On July 24, 2006, the Arizona Department of Financial Institutions ("Department") issued a
9 Notice of Hearing alleging that Petitioners had violated Arizona law. Wishing to resolve this matter
10 in lieu of an administrative hearing, Petitioners do not contest the following Findings of Fact and
11 Conclusions of Law, and consent to the entry of the following Order, except that Petitioners do not
12 admit or deny liability as to the Valenzuela matter.

13 **FINDINGS OF FACT**

14 1. Petitioner Consumer First Funding, Inc. (hereinafter "CFF") is an Arizona corporation
15 authorized to transact business in Arizona as a mortgage banker, license number BK 0905204,
16 within the meaning of A.R.S. §§ 6-941, *et seq.* The nature of CFF's business is that of making,
17 negotiating, or offering to make or negotiate a mortgage banking loan or a mortgage loan secured by
18 Arizona real property within the meaning of A.R.S. § 6-941(5).

19 2. Petitioner Mr. Jeff A. George ("Mr. George") is the C.E.O. of CFF, and as such, is authorized
20 to transact business in Arizona as a mortgage banker within the meaning of A.R.S. § 6-941(5), as
21 outlined within A.R.S. § 6-943(F).

22 3. CFF and Mr. George are not exempt from licensure as mortgage bankers within the meaning
23 of A.R.S. §§ 6-942 and 6-941(5).

24 **March 21, 2006 Examination**

25 4. A March 21, 2006 examination of CFF, conducted by the Department, revealed that CFF and
26 Mr. George:

 a. Transferred or assigned its mortgage banker license; specifically:

- i. Petitioners' branch agreement includes a clause stating in part that,
"All branch expenses or third party agreements of any kind are the responsibility of the branch manager; this includes appraisal and credit reports, or any other fees requested by the branch during the loan process";
 - ii. Petitioners' branch agreement includes a clause stating in part that,
"The branch manager is expected to take full responsibility for management and operation of the branch, including employees, lease agreements, or any third party agreements";
 - iii. The lease for the branch office located at 298 East 4th Street, Benson, Arizona was executed by Petitioners' branch manager;
 - iv. The office space utilized by the branch office located at 1822 North Craycroft Road, Tucson, Arizona is owned by Petitioners' branch manager; and
 - v. Petitioners execute an agreement with their branch managers whereby the branch is required to pay the following:
 1. \$450.00—underwriting, doc preparation, tax service, flood, and wire fee;
 2. \$450.00—processing fee;
 3. \$50.00—FHA/VA administrative/insurance fee;
 4. \$200.00 transfer fee;
 5. \$75.00—E & O insurance fee;
 6. \$250.00—brokerage fee; and
 7. \$150.00—payroll expense fee;
- b. Failed to obtain the Superintendent's prior approval before changing control; specifically:

- 1 i. Mr. George acquired the remaining fifty percent (50%) of Consumer
2 First Funding, Inc.'s shares from Gene L. Weimer, former CFF
3 President, without obtaining prior approval;
- 4 c. Failed to use its name and license number, as issued on the its principal place of
5 business license, within all regulated advertising in two (2) advertisements or
6 solicitations; specifically:
- 7 i. www.getmymiprefund.com failed to include Petitioners' name and
8 license number; and
- 9 ii. Petitioners' "Keep Your Home Today" postcard mailer failed to
10 include their complete name;
- 11 d. Failed to conduct the minimum elements of reasonable employee investigations
12 before hiring employees; specifically:
- 13 i. Failed to collect and review all documents pertaining to the
14 Immigration Reform and Control Act of 1986 before hiring at least
15 nine (9) employees;
- 16 ii. Failed to obtain a completed Employment Eligibility Verification
17 (Form I-9) before hiring at least thirteen (13) employees;
- 18 iii. Failed to consult with the applicant's most recent or next most recent
19 employer before hiring at least fourteen (14) employees;
- 20 iv. Failed to inquire regarding an applicant's qualifications and
21 competence for the position before hiring at least fourteen (14)
22 employees;
- 23 v. Failed to obtain a credit report before hiring or failed to investigate
24 further as to the applicant's honesty, truthfulness, integrity, or
25 competence before hiring at least fourteen (14) employees;
- 26 vi. Failed to obtain a completed and signed employment application before

- 1 hiring at least four (4) employees;
- 2 vii. Failed to obtain a signed statement attesting to all of an applicant's
- 3 felony convictions, including detailed information regarding each
- 4 conviction; and
- 5 viii. Failed to correct this violation from their most previous examination;
- 6 e. Contracted with or paid compensation to unlicensed, independent contractors;
- 7 specifically:
- 8 i. On March 15, 2006, Petitioners' paid \$1,205.00 to Westcal Mortgage
- 9 Corporation out of their payroll account, check number 0435;
- 10 ii. On September 8, 2005, Petitioners' paid \$3,122.15 to Mortgage
- 11 Express, Inc. out of their general account, check number 8389;
- 12 iii. On February 17, 2005, Petitioners' paid \$4,151.82 to Windsor Capital,
- 13 L.L.C. out of their payroll account, check number 2842;
- 14 iv. On January 13, 2005, Petitioners' paid \$7,463.75 to Windsor Capital,
- 15 L.L.C. out of their payroll account, check number 2816; and
- 16 v. Failed to correct this violation from their most previous examination;
- 17 f. Failed to first obtain written authorization to fill in blank spaces prior to permitting
- 18 borrowers to sign loan documents containing blank spaces;
- 19 i. Failed to correct this violation from their two (2) most previous
- 20 examinations;
- 21 g. Failed to comply with the disclosure requirements of Title I of the Consumer
- 22 Protection Act (15 U.S.C. §§ 1601-1666j); the Real Estate Settlement Procedures Act
- 23 (12 U.S.C. §§ 2601-2617); and the regulations promulgated under these acts;
- 24 specifically:
- 25 i. Failed to re-disclose annual percentage rates ("APRs") to eleven (11)
- 26 borrowers when the final APRs exceeded the initial APRs by more than

- 1 the one quarter of one percent tolerance level;
- 2 ii. Failed to disclose the yield spread premium ("YSP") on the good faith
- 3 estimate ("GFE") to borrowers in eleven (11) mortgage loan
- 4 transactions;
- 5 iii. Failed to issue a completed and signed servicing transfer disclosure in
- 6 three (3) mortgage loan transaction;
- 7 iv. Failed to issue a completed Patriot Act disclosure to five (5) borrowers;
- 8 v. Failed to issue a completed and signed FNMA Form 1003 to one (1)
- 9 borrower;
- 10 vi. Failed to issue a completed Truth in Lending ("TIL") disclosure to six
- 11 (6) borrowers;
- 12 vii. Failed to issue a completed good faith estimate ("GFE") to two (2)
- 13 borrowers; and
- 14 viii. Failed to correct this violation from their most previous examination;
- 15 h. Made a false promise or misrepresentation or concealed an essential or material fact
- 16 in the course of the mortgage banker business; specifically:
- 17 i. Petitioners issued an interest rate lock-in agreement to borrowers,
- 18 which displayed rates ranging from 0.95% APR to 2.00 APR. These
- 19 rates are a "minimum payment" feature of the payment option program
- 20 and do not fluctuate with the market. Petitioners execute this lock-in
- 21 agreement with borrowers for rates not directly correlated to the bond
- 22 market;
- 23 ii. Petitioners mass mailed to Arizona consumers a "Refund Notice"
- 24 letter, which states that a consumer may request a refund of their
- 25 mortgage insurance premium ("MIP"). Petitioners are actually
- 26 soliciting consumers and seeking to refinance borrowers' for a

1 mortgage loan. Furthermore, the solicitation implies that it is an
2 official notice from FHA, which confuses consumers;

- 3 iii. Petitioners repeatedly failed to redisclose significant APR increases to
4 their borrowers compared to the APRs reflected on the initial TIL
5 disclosures, which were far lower than current market rates. Petitioners
6 also failed to issue a revised TIL disclosure. The final TIL disclosure
7 delivered by Petitioners to the borrower at signing displayed an APR
8 that was far greater than the APR on the initial TIL; specifically:

<u>Borrower</u>	<u>Initial TIL APR</u>	<u>Final TIL APR</u>
9 1. Smith	2.522%	6.595%
10 2. Garza	0.95%	6.184%
11 3. Ferguson	1.95%	6.422%
12 4. Oravetz	0.95%	7.1927%
13 5. Palasota	1.00%	8.8676%
14 6. Kyle	0.95%	7.1271%
15 7. Kwok	7.904%	10.834%

- 16
17 i. Failed to maintain a trust subsidiary ledger containing all of the required fields;
18 specifically: the trust subsidiary ledger was missing;
19 i. Failed to correct this violation from their two (2) most previous
20 examinations;
21 j. Failed to use a statutorily correct written fee agreement; specifically:
22 i. Fails to include the term for which the agreement is to remain in force;
23 and
24 ii. Petitioners failed to sign and complete every fee agreement;
25 k. Failed to ensure that the Responsible Individual (Mr. George) maintained a position
26 of active management and failed to ensure that the Responsible Individual was

1 knowledgeable about Arizona activities; specifically:

- 2 i. Transferred or assigned their license;
 - 3 ii. Failed to obtain prior approval before changing control;
 - 4 iii. Failed to respond to complaints in a timely manner;
 - 5 iv. Violated a final order, Notice of Assessment No. 04F-BD116-SBD,
6 issued on February 24, 2004 and signed and consented to on April 22,
7 2004; and
 - 8 v. Paid compensation to unlicensed independent contractors;
- 9 1. Failed to correct the following violations from their most previous examination
10 conducted on or around February 17, 2004; specifically:
- 11 i. Failed to conduct the minimum required elements of reasonable
12 employee investigations before hiring employees;
 - 13 ii. Paid compensation to unlicensed independent contractors;
 - 14 iii. Failed to first obtain written authorization to fill in blank spaces prior
15 to permitting borrowers to sign loan documents containing blank
16 spaces;
 - 17 iv. Failed to comply with the disclosure requirements of Title I of the
18 Consumer Protection Act (15 U.S.C. §§ 1601-1666j); the Real Estate
19 Settlement Procedures Act (12 U.S.C. §§ 2601-2617); and the
20 regulations promulgated under these acts;
 - 21 v. Failed to maintain a trust subsidiary ledger containing all of the
22 required fields; and
 - 23 vi. Failed to use a statutorily correct written fee agreement.

24 **Michael and Deborah Valenzuela Complaint #4009093**

25 5. The Department conducted a consumer affairs investigation resulting from a June 9, 2005
26 consumer complaint filed by Mr. Michael and Mrs. Deborah Valenzuela (the "Valenzuelas") against

1 CFF. The consumer affairs' complaint investigation revealed that CFF and Mr. George:

2 a. Failed to comply with the disclosure requirements of Title I of the Consumer
3 Protection Act (15 U.S.C. §§ 1601-1666j); the Real Estate Settlement Procedures Act
4 (12 U.S.C. §§ 2601-2617); and the regulations promulgated under these acts;
5 specifically:

6 i. Petitioners issued two (2) defective Truth in Lending ("TIL")
7 disclosures titled "Notice of Right to Cancel" (right to rescind);

8 a. The date of the transaction is incorrectly listed as December 1,
9 2004 on both Michael and Deborah Valenzuela's "Notice of
10 Right to Cancel" disclosures. The Valenzuelas, separately,
11 actually signed and dated the two disclosures on December 3,
12 2004, which was their closing date;

13 ii. Petitioners issued a defective TIL disclosure statement that incorrectly
14 discloses a 4.742% annual percentage yield;

15 iii. Petitioners failed to disclose the yield spread premium ("YSP") in the
16 amount of \$7,717.50 on the HUD-1 Settlement Statement; and

17 iv. Petitioners failed to provide the Valenzuelas with a good faith estimate
18 within three (3) days (the GFE is dated October 8, 2004);

19 b. Made a false promise or misrepresentation or concealed an essential or material fact
20 in the course of the mortgage banker business; specifically:

21 i. As reflected in several documents and as represented by Petitioners, the
22 Valenzuelas signed and agreed to an interest only payment of \$693.00
23 per month with a 1.750% fixed final note interest rate for a period of
24 five years. In fact, the Valenzuelas were not put into the loan program
25 they agreed to. The Valenzuelas were placed into an adjustable rate
26 mortgage ("ARM"), option ARM with negative amortization with a

- 1 monthly payment of \$1,366.77 (to date it is near \$2,000.00 per month);
- 2 ii. On August 8, 2005, Petitioners sent the Department a letter indicating
- 3 that, "the loan we placed the Valenzuelas in had guidelines and
- 4 perimeters demonstrated to us which we passed on ... we later found
- 5 out that the information had a few critical inaccuracies resulting in the
- 6 difference in our good faith estimate and the HUD-1." Furthermore,
- 7 Petitioners indicated that they had, "discussed changing the program at
- 8 no cost ...";
- 9 iii. On August 17, 2005, Petitioners faxed to the Department a fax cover
- 10 letter stating, "G.F.E. My loan officer understood this was an interest
- 11 only mortgage. It was submitted as an interest only mortgage, the
- 12 lender did not bring it to our attention";
- 13 iv. On September 15, 2005, Petitioners faxed the Department a fax cover
- 14 letter indicating what actions they would take for the Valenzuelas:
- 15 "Prepayment penalty will be paid off through the refinance; (2) She
- 16 (Ms. Valenzuela) will receive a check today via runner for \$6,892.00;
- 17 (3) difference in payments Feb.-Sept., will continue monthly until
- 18 completion (\$5,392.00); and (4) deferred interest, she will give me an
- 19 exact number Friday. Will send \$1,500.00 now. She is fine with this."
- 20 v. On September 15, 2005, Petitioners issued the Valenzuelas a \$6,892.00
- 21 closing cost refund check;
- 22 vi. Petitioners failed to reimburse the Valenzuelas the difference between
- 23 \$1,366.77 and \$693.00 beginning in October and to this date;
- 24 vii. On October 31, 2005, the Department received a letter from Petitioners
- 25 to Mr. Drucker indicating that, "the Valenzuelas have been approved
- 26 for their refinance ... the final mortgage is a 5 year fixed rate at 5.875%

1 interest only. This will close right after the first refinance to pay off the
2 prepayment penalty and closing costs”;

3 viii. On January 23, 2006, Petitioners sent the Department a letter stating in
4 part that, “We feel it is the responsibility of CFF to provide the
5 Valenzuelas with an alternative mortgage program they would have
6 initially accepted, had CFF known the true specifics of the current
7 mortgage program in question, or return Mr. and Mrs. Valenzuela to
8 the mortgage program they had originally. Both of these options are at
9 no cost to Mr. and Mrs. Valenzuela”;

10 ix. Petitioners have made several representations to the Department and to
11 the Valenzuelas that have not been fulfilled to this date;

12 a. Petitioners represented to the Department that they were
13 refinancing at no cost to the Valenzuelas;

14 b. Petitioners represented to the Department that they would pay
15 certain costs to the Valenzuelas immediately; and

16 c. Petitioners have consistently misled the Valenzuelas and the
17 Department into believing that they would correct the mortgage
18 loan complaint lodged against them; and

19 x. To date, Petitioners have not resolved the Valenzuelas’ complaint. The
20 Valenzuelas monthly mortgage payment is currently approaching
21 \$2,000.00 per month.

22 6. Based on the above findings, the Department issued and served upon CFF and Mr.
23 George an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order
24 (“Cease and Desist Order”) on May 23, 2006.

25 7. On June 29, 2006, Petitioners filed a Request For Hearing to appeal the Cease and
26 Desist Order.

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- 1 i. A.A.C. R20-4-1806(B)(5) and A.A.C. R20-4-1806(C) by failing to maintain a trust
2 subsidiary ledger containing all of the required fields;
3 j. A.R.S. § 6-946(C) by failing to use proper written fee agreements; and
4 k. A.R.S. § 6-943(F) and A.A.C. R20-4-102 by failing to ensure that the Responsible
5 Individual maintained a position of active management.

6 **Valenzuela Complaint #4009093**

- 7 a. A.R.S. § 6-946(E) and A.A.C. R20-4-1806(B)(6)(e) by failing to comply with the
8 disclosure requirements of Title I of the Consumer Protection Act (15 U.S.C. §§
9 1601-1666j); the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601-2617);
10 and the regulations promulgated under these acts; and
11 b. A.R.S. § 6-947(L) by making a false promise or misrepresentation or concealing an
12 essential or material fact in the course of the mortgage banker business.

13 3. The violations, set forth above, constitute grounds for: (1) the issuance of an order
14 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to
15 take the appropriate affirmative actions including an Order of Restitution against Petitioners and in
16 favor of the Valenzuelas,, within a reasonable period of time prescribed by the Superintendent, to
17 correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the imposition
18 of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the suspension or revocation of
19 Petitioners' license pursuant to A.R.S. § 6-945; and (4) an order or any other remedy necessary or
20 proper for the enforcement of statutes and rules regulating mortgage bankers including an Order of
21 Restitution against Petitioners and in favor of the Valenzuelas, pursuant to A.R.S. §§ 6-123 and 6-
22 131.

23 **ORDER**

24 1. Consumer First Funding, Inc. and Mr. George shall immediately stop the violations set
25 forth in the Findings of Fact and Conclusions of Law. Consumer First Funding, Inc. and Mr.
26 George:

- a. Shall not transfer or assign their mortgage banker's license;
- b. Shall obtain the Superintendent's prior approval before changing control;
- c. Shall use its name and license number, as issued on the its principal place of business license, within all regulated advertising;
- d. Shall conduct the minimum elements of reasonable employee investigations before hiring employees;
- e. Shall not pay compensation to unlicensed, independent contractors;
- f. Shall first obtain written authorization to fill in blank spaces prior to permitting borrowers to sign loan documents containing blank spaces;
- g. Shall comply with the disclosure requirements of Title I of the Consumer Protection Act (15 U.S.C. §§ 1601-1666j); the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601-2617); and the regulations promulgated under these acts;
- h. Shall not make a false promise or misrepresentation or concealing an essential or material fact in the course of the mortgage banker business;
- i. Shall maintain a trust subsidiary ledger containing all of the required fields;
- j. Shall use proper written fee agreements;
- k. Shall ensure that the Responsible Individual maintained a position of active management; and
- l. Shall not violate any applicable law, rule, or order, which are grounds for license suspension or revocation pursuant to A.R.S. § 6-945(A).

2. Mr. George shall immediately pay to the Department a civil money penalty in the amount of **five thousand dollars (\$5,000.00)**.

3. Consumer First Funding, Inc., Mr. George, and Mr. and Mrs. Valenzuela have entered into a settlement agreement which is acceptable to all parties, proof thereof to be provided to the Department.

...

4. Consumer First Funding, Inc. shall surrender its mortgage banker license upon completion of the settlement agreement with Mr. and Mrs. Valenzuela. No other mortgage banker business shall be conducted by Consumer First Funding, Inc. The license shall be surrendered no later than December 31, 2006.

5. Consumer First Funding , Inc. and Mr. George shall keep their books and records at:
Shurgard Storage, 8889 E. Desert Cove, Locker #1054, Scottsdale, Arizona 85260, (480) 860-1287,
for the statutorily required time.

6. The provisions of this Order shall be binding upon Petitioners, their employees, agents, and other persons participating in the conduct of the affairs of Petitioners.

7. This Order shall become effective upon service, and shall remain effective and enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated, or set aside.

SO ORDERED this 15th day of November, 2006.

Felicia Potluri

Felecia A. Rotellini
Superintendent of Financial Institutions

CONSENT TO ENTRY OF ORDER

1. Petitioners acknowledge that they have been served with a copy of the foregoing Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the same, are aware of their right to an administrative hearing in this matter, and have waived the same.

2. Petitioners admit the jurisdiction of the Superintendent and consent to the entry of the foregoing Findings of Fact, Conclusions of Law, and Order.

3. Petitioners state that no promise of any kind or nature has been made to induce them to consent to the entry of this Order, and that they have done so voluntarily.

4. Petitioners agree to cease from engaging in the violative conduct set forth above in the Findings of Fact and Conclusions of Law.

5. Petitioners agree to provide restitution to the Valenzuelas as set forth above.

6. Petitioners acknowledge that the acceptance of this Agreement by the Superintendent is solely to settle this matter and does not preclude this Department, any other agency or officer of this state or subdivision thereof from instituting other proceedings as may be appropriate now or in the future.

7. Mr. Jeff A. George, C.E.O., on behalf of Consumer First Funding, Inc. and himself represents that he is the C.E.O., and that, as such, has been authorized by Consumer First Funding, Inc. to consent to the entry of this Order on its behalf.

8. Petitioners waive all rights to seek judicial review or otherwise to challenge or contest the validity of this Cease and Desist Order.

DATED this 13 day of November, 2006.

By:

Jeff A. George, C.E.O.
Consumer First Funding, Inc.

ORIGINAL of the foregoing filed this 15th
day of November, 2006, in the office of:

Felecia A. Rotellini
Superintendent of Financial Institutions
Arizona Department of Financial Institutions
ATTN: June Beckwith
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

By

~~JEFF~~ A. George Individually

COPY mailed same date to:

Lewis D. Kowal, Administrative Law Judge
Office of the Administrative Hearings
1400 West Washington, Suite 101
Phoenix, AZ 85007

Craig A. Raby, Assistant Attorney General
Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007

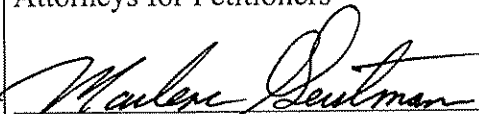
1 Robert D. Charlton, Assistant Superintendent
J. P. Ciudad, Senior Examiner, Mortgage Division
2 Neal Schafer, Senior Examiner, Consumer Affairs
Arizona Department of Financial Institutions
3 2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

4 AND COPY MAILED SAME DATE by
5 Certified Mail, Return Receipt Requested, to:

6 Jeff A. George, C.E.O.
Consumer First Funding, Inc.
7 7077 E. Marilyn Rd., Building 5, Suite 140
Scottsdale, AZ 85254

8 Jeff A. George
9 Statutory Agent for:
Consumer First Funding, Inc.
10 7735 E. Candelaria Dr.
Scottsdale, AZ 85255

11 Loren Molever, Esq.
12 Christopher D. Lonn, Esq.
Hymson Goldstein & Pantiliat, P.C.
13 14646 N. Kierland Blvd., Suite 255
Scottsdale, AZ 85254
14 Attorneys for Petitioners

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16 973526; CPA06-207